In the present case the writ was issued on December 8, 1981 but there is no evidence before the court as to when it was served on the respondent. The Defence was filed on September 27, 1982 and in those circumstances we are of the opinion that interest should run for the period from September 27, 1982 to the date of trial. That leaves the rate of interest to be considered and in line with the rate of 6% per annum awarded by our courts over the years which we think is a realistic rate, we are of the opinion that the interest rate should be 6%.

The Agreed Sum of $16,250 Special Damages

On the principle that a plaintiff should be awarded interest on the sum which represents the actual pecuniary loss suffered by him from the date it was incurred to the date of trial because of the wrongful act of a defendant and which ought to have been paid to him but was not, we are of the opinion that the appellant should be awarded interest at 6% per annum from the date of the issue of the writ, December 8, 1981 to the date of trial.

Accordingly, the appeal should be allowed and the judgment of Chua J. varied so as to allow for interest on the special damages of $16,250/– at 6% per annum from December 8, 1981 to the date of trial and on the general damages of $30,000 at 6% per annum from September 27, 1982 to the date of trial.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh & M. Karthigesu.*

BANK OF INDIA v. TRANS CONTINENTAL COMMODITY MERCHANTS LTD. & ANOR.

[O.C.J. (Abdul Wahab Ghows J.) March 24, 1986]

[Singapore – Originating Summons No. 765 of 1983]

Reciprocal Enforcement of Judgments – Judgment and order obtained in England – Registration in Singapore – Application to set aside registration – Allegation of illegality – Whether just and convenient to enforce judgment – Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24), s. 3 – R.S.C. 1970, O.67, r.9.

Commodities Trading – Foreign exchange – Commonwealth judgment – Registration in Singapore – Application to set aside.

In this case, the judgment creditors, the Bank of India, an Indian bank with a branch in the city of London, carried on the business of an international bank, including the handling of documentary credits and the provision of finance for exports. The first judgment debtors, Trans Continental Commodity Merchants Ltd. ("TCCM") traded in edible oils and other commodities and sought banking facilities in London with the bank. When TCCM became a customer of the bank, J. N. Patel, the second judgment debtor, executed a guarantee dated March 13, 1975, in respect of TCCM's liabilities to the bank. Thereafter the bank handled some 30 foreign exchange transactions, 12 of which were not satisfactorily performed by TCCM, as they failed to deliver the dollars to the bank on the due dates. The bank sued TCCM and Patel, claiming damages from TCCM for breach of contract and claiming a total of £186,000 from Patel under his guarantee. In the result the bank obtained judgment against TCCM for damages to be assessed. Bingham J. held Patel liable under the guarantee which had been "deliberately drawn in the widest possible language so as to cover any liability of the Company to the Bank." The English Court of Appeal dismissed Patel's appeal.

Patel applied by originating summons to the Singapore High Court to set aside the registration under the Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 24) of a judgment of the High Court of Justice, Queen's Bench Division, dated October 22, 1981, and an order of the Court of Appeal dated May 24, 1983. He contended that the said judgment and the cause of action on which it was given and the agreement or agreements from which the cause of action arose were an infringement of section 2(b) of Article VIII of the Bretton Woods Agreement and were also infringements of sections 4(2), 9(1) and 36(1) of the Malaysian Exchange Control Act, 1953. Registration of the said judgment was tantamount to enforcing a judgment rooted in illegality.

Held, dismissing the application with costs: (1) the Court cannot give judgment on contentious questions of fact which had not been raised in the courts in London;

(2) if Patel had in fact created TCCM for the purpose of circumventing the Bretton Woods Agreement and the Malaysian Exchange Control Act, he must not be allowed to profit from his own wrongdoing at the expense of an innocent party;

(3) it is just and convenient that the judgment of the High Court of Judicature, Queen's Bench Division, dated October 22, 1981, and the order of the Court of Appeal dated May 24, 1983, should be enforced in Singapore.

[*Editorial Note:* The appeal by J.N. Patel, the 2nd judgment debtor was dismissed by the Court of Appeal on September 1, 1986.]

Cases referred to:

(1) *Sharif* v. *Azad* [1967] 1 Q.B. 605.
(2) *United City Merchants (Investments) Ltd.* v. *Royal Bank of Canada* [1983] 1 A.C. 168.
(3) *Batra* v. *Ebrahim* [1982] 2 Lloyd's Rep. 11.
(4) *Ralli* v. *Angullia* (1917) 15 S.S.L.R. 33.
(5) *Lam Soon Cannery & Co.* v. *Hooper & Co.* [1966] 1 M.L.J. 198.
(6) *Connolly* v. *Consumers Cordage Co.* 89 L.T. 347.

ORIGINATING SUMMONS.

R. Raj Singam for the judgment creditors.

S. Selvadurai for the applicant/2nd judgment debtor.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: This is an application to set aside the registration under the Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 24) of a judgment of the High Court of Justice, Queen's Bench Division dated October 22, 1981 and an Order of the Court of Appeal dated May 24, 1983. The judgment creditors in this case are the Bank of India which I shall refer to as "the Bank" and the first judgment debtors are the Trans Continental Commodity Merchants Limited (hereinafter referred to as "TCCM") and the second judgment debtor is Jashbai Nagjibhai Patel (hereinafter referred to as "Patel").

The facts are briefly as follows. The Bank is an Indian bank with a branch in the city of London. It carried on the business of an international bank including the handling of documentary credits and the provision of finance for exports. It also had a foreign exchange department. TCCM was one of the Bank's customers. TCCM carried on the business of trading in edible oils and other commodities. TCCM sought banking facilities in London with the Bank and these facilities included the handling of documentary credits and all the company's foreign exchange deals. These deals took the form of forward contracts for the sale or purchase of foreign exchange, under which the amount, the currency, the rate, and the date of delivery were agreed.

When TCCM became the Bank's customer a form of guarantee of TCCM's liabilities to the Bank was entered into by Patel. The guarantee was dated March 13, 1975. Thereafter the Bank handled a number of foreign exchange transactions described aforesaid. There were about 30 of such transactions in all, some of sale, some of purchase, entered into between March 11 and July 3, 1975. Of these contracts, 18 were performed satisfactorily but the remaining 12 were not. Under these 12 contracts TCCM had agreed to sell certain amounts of dollars to the Bank at specified rates of exchange, for delivery on specified dates. On the due dates for delivery of the dollars to the Bank, TCCM failed to make such delivery. Accordingly the Bank commenced proceedings against TCCM and Patel, claiming damages from TCCM for breach of contract and claiming a total of £186,000 from Patel under his guarantee. Pleadings were exchanged. On April 10, 1981 TCCM's defence and counterclaim were struck out and judgment was entered against TCCM for damages to be assessed. In the result two matters fell to be decided by Bingham J. at the trial in the High Court of Justice, Queen's Bench Division:

(1) the assessment of damages payable by TCCM and

(2) the determination of the issue of liability between the Bank and Patel, and if Patel was held liable, the determination of the sum due from him. Since TCCM for all practical purposes was no longer in existence, the crucial question before the trial judge was the liability of Patel.

Patel contested liability on a number of grounds, only two of which are relevant for our purposes. They are:

(1) that on a true construction of the terms of the guarantee it did not apply to any liability of TCCM under foreign exchange transactions of the type in question, and

(2) that the foreign exchange transactions between the Bank and TCCM were *ex facie* illegal, so that no liability arose in respect of them, either of TCCM itself or of Patel, under his guarantee.

Counsel for Patel sought before the trial judge and the Court of Appeal to place a restricted meaning upon his guarantee but Bingham J. rejected his submissions and held that the guarantee had been "deliberately drawn in the widest possible language so as to cover any liability of the Company to the Bank, arising out of their mutual relations as bankers and customer, however that liability might arise and whether it arose out of what may be called a pure banking activity or not." The Court of Appeal agreed both with Bingham J.'s conclusion and with his reasoning in this connection.

As regards the submission that the foreign exchange transactions were *ex facie* illegal, there were two limbs to the argument. The first was that there was *ex facie* illegality in that the foreign exchange transactions were contrary to section 30(3) of the U.K. Exchange Control Act, 1947. Bingham J. rejected Patel's counsel's submissions in this connection. Secondly, that by virtue of Rule

15 of the Regulations set out in a Notice No. EC 54 issued under the said Exchange Control Act, the transactions were only lawful if certain conditions were complied with, in particular, the condition that the customer was due to receive foreign currency from a third party under a firm contractual commitment. Here, according to Patel's counsel, that condition was not fulfilled. However Patel had been refused leave by the judge to plead illegality and so he could only succeed on the point if there was *ex facie* illegality. Patel could not overcome this evidential difficulty. Bingham J.'s decision herein was affirmed by the Court of Appeal. Patel's appeal was dismissed with costs.

In his application to set aside the registration under the Reciprocal Enforcement of Commonwealth Judgments Act of the aforesaid judgment of the High Court of Justice, Queen's Bench Division and of the Order of the Court of Appeal dated May 24, 1983, Patel contends that in all the circumstances it is not just and convenient for the High Court of Singapore to permit the registration of the said judgment as such judgment and the cause of action on which it was given and the agreement or agreements from which the cause of action arose are an infringement of section 2(b) of Article VIII of the Bretton Woods Agreement and are also infringements of sections 4(2), 9(1) and 36(1) of the Malaysian Exchange Control Act, 1953. Mr. Selvadurai, Patel's counsel argued that the registration of the said judgment is tantamount to enforcing a judgment rooted in illegality in that the said judgment is based on a cause of action stemming from an agreement or agreements which are wholly corrupted by illegality as the said agreement or agreements infringed the said Bretton Woods Agreement and the Malaysia Exchange Control Act. Mr. Selvadurai added that the registration of the judgment of the High Court of Justice, Queen's Bench Division and the Order of the Court of Appeal is contrary to the public policy of Singapore as they infringe the Bretton Woods Agreement and the Malaysia Exchange Control Act, 1953.

The contracts between the Bank and TCCM were entered into in London and were English contracts. There is no dispute that English law was the proper law of these contracts. Mr. Selvadurai conceded that the London branch of the Bank and TCCM were resident in England at the time these contracts were entered into. TCCM was in fact a company incorporated in England. The leitmotif of these contracts was the purchase of American dollars with Sterling or vice versa. There is no evidence that any of the foreign exchange contracts between the Bank and TCCM made any reference to Malaysian currency. The contracts were to be wholly performed in England. That being so, they cannot as a result of the Bretton Woods Agreement be affected by foreign exchange regulations – see *Sharif* v. *Azad*.[1]

Mr. Selvadurai, however, contended that the actual parties to these foreign exchange contracts were the Bank and Patel because TCCM was a "creature" of Patel created to enable Patel to enter into forward foreign exchange contracts without overtly contravening the Malaysia Exchange Control Act. Mr. Selvadurai said his contention was mainly based on the trial judge's finding that TCCM was under Patel's control as he was the beneficial owner of almost all its shares. Mr. Selvadurai also referred to the affidavit of Hemant Patel of April 30, 1984 which exhibited a letter dated September 30, 1975 from the Bank to its London solicitors wherein the Bank stated: "The guarantee of Mr. Patel was taken by the Bank as we understood that Mr. Patel was, through a series of nominees the virtual owner of the Company." Mr. Selvadurai then argued that on the facts that TCCM was formed on January 30, 1975, that the Bank negotiated with TCCM and conferred with Patel in February 1975 and that the guarantee was sent to Patel who was then in Penang on March 1, 1975 for his signature, the inference was clear that TCCM was a puppet manipulated by Patel.

I cannot accept Mr. Selvadurai's aforesaid contention as it contradicts what his client Patel has always maintained. In his affidavit filed in these proceedings on June 14, 1984. Patel said:

> "I had agreed to provide a guarantee for certain liabilities (hereinafter specified) of the First Judgment Debtors (hereinafter referred to as 'Transcontinental') on the oral request of Mr. Dhondy, the Bank's Chief Executive Manager. The said oral request was made in the following circumstances: A Mr. Wickers, a friend of 6 years' standing was a Director of Transcontinental. He wanted some 'banking facilities' and requested my assistance in introducing willing bankers. I first became acquainted with Mr. Wickers sometime in 1969 while I was a partner in a trading firm called Messrs Manilal & Sons in Penang and he was in charge of Purchase and Sales in a trading firm known as Messrs J.H. Raynor Company in London dealing mainly in oil. On behalf of Messrs Manilal & Sons, I did business with Messrs J.H. Raynor Company through Mr. Wickers for about 2 to 3 years during which we developed our friendship.
>
> At the time of the said oral request by Mr. Wickers, I was in London on a business trip on a separate matter. Mr. Wickers visited me at the hotel in London where I was staying and during general discussion, said that he needed my assistance in obtaining a 'banking facility.' His explanation was that

he needed a banker preferably the Bank here to provide Transcontinental with a bills discounting service. He wanted me to put in a favourable word on Transcontinental's behalf. This was so because when Mr. Wickers first launched Transcontinental in late 1974 or very early 1975, he approached me to join him as a Director in the Company. I did not agree to this as I was engaged in heavy business ventures of my own. However, at that time, I told him that as his friend, I would support him by introducing him to important contacts within the business community. I believe if my memory serves me that it was I who referred Mr. Wickers to Mr. Dhondy then. Since Mr. Wickers now approached me again for the bills discounting matter, I agreed to assist. We met Mr. Dhondy in his office. Mr. Dhondy, upon hearing my request made on Mr. Wickers' behalf was very agreeable and asked if I would be willing to stand as guarantor for Transcontinental. One can, I hope, appreciate the unenviable position in which I then found myself. Having introduced Mr. Wickers and Transcontinental in favourable terms, I could not say no, more so in Mr. Wickers' presence. Further the discounting of bills did not (and does not generally) involve any high risk from a commercial point of view. Accordingly, I agreed to provide the guarantee. At no time was I told by anyone that the guarantee was in relation to any other transactions such as speculative foreign exchange ('forex') dealings in the open foreign currency market. Nor did Mr. Dhondy indicate to me at any time or thereafter that the guarantee could cover forex dealings. In relation to this guarantee, Mr. Dhondy and I met only once as above stated and even then its terms were not discussed. I knew that a standard form of guarantee was involved and as I reposed trust and confidence in both Mr. Wickers and Mr. Dhondy, I did not consider it odd when its terms were not detailed. I returned to Penang soon after as my trip to London on that occasion was for only 8 to 10 days.

It is now clear to me that Transcontinental (to the knowledge of Mr. Wickers) was directly involved in forex dealings even before my agreement as above stated to provide a guarantee and that Mr. Dhondy too was aware of this. There is now produced and shown to me marked "JNP 3" a copy of a letter or memorandum dated March 6, 1975 from Mr. Dhondy to his sub-managers. The tenor of this letter makes it clear that Transcontinental had been dealing with forex through the Bank for some time and the upper limit of the credit given to Transcontinental was US$2 million, which is to me a staggering amount. I point out that the guarantee was only signed on March 13, 1975. The Bank, and Mr. Dhondy, although having known me for over 20 years and at all times having regarded me as 'valuable and trustworthy' (see the judgment of the Honourable Mr. Justice Bingham at page 508) did not see fit to warn me of the past debts of Transcontinental, incurred through high-risk forex dealings in the international money markets. This may well have been because all parties concerned understood the guarantee as covering only bills discounting. In any event, I remained at all times under the impression that I was guaranteeing only bills discounting."

To bolster his contention that Patel had infringed the Bretton Woods Agreement and the Malaysia Exchange Control Act, Mr. Selvadurai argued that the guarantee signed by Patel on March 5, 1975 in Penang must be regarded as an exchange contract within Article VIII of the Bretton Woods Agreement.

It is convenient to set out here the relevant portion of the Bretton Woods Agreement:

Article VIII *GENERAL OBLIGATIONS OF MEMBERS*

Section 2(b) ... "Exchange Contracts which involve the currency of any member and which are contrary to the Exchange Control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord co-operate in measures for the purposes of making the Exchange Control regulations of either member more effective provided that such measures and regulations are consistent with this Agreement..."

I have to reject Mr. Selvadurai's argument that as Patel was himself liable under the forward exchange contracts because of the "broad sweep" of his guarantee, the guarantee was in effect an exchange contract. It is clear from the authorities cited that the term "exchange contracts" in section 2(b) of Article VIII of the Bretton Woods Agreement should be interpreted narrowly and should be confined to contracts to exchange the currency of one country for that of another. It cannot include the guarantee signed by Patel – see *United City Merchants (Investments) Ltd* v. *Royal Bank of Canada.*[2]

Then Mr. Selvadurai argued that the guarantee executed by Patel infringed the Malaysian Exchange Control Act because it was an act preparatory to buying or selling foreign currency to a person outside Malaysia and also because it was an act which involved or was preparatory to the making of a payment outside Malaysia without the permission of the Controller. This argument presupposes that Patel intended to commit breaches of contract and had given the guarantee to the Bank preparatory to making payment to it of damages for such breaches. I was of the opinion that this argument was so far fetched that it was not worthy of rational opposition.

None of the above points were raised by or on behalf of Patel in the English action. None of the submissions or evidence now adduced on affidavit was made or adduced in the course of that action. The points now canvassed and the evidence necessary to support them could have been raised even in the proceedings before the Court of Appeal – see *Batra* v. *Ebrahim.*[3] Furthermore, the defence of the English action was conducted by or on behalf of Patel on a basis fundamentally contradictory to or inconsistent with the evidence now adduced and the contentions now raised. In

the course of the trial before Bingham J., Patel's counsel sought leave to re-amend the defence to plead that the guarantee was unenforceable on the ground that the liability of the principal debtor, TCCM, arose from contracts which contravened the U.K. Exchange Control Act 1947 and notices issued and directions made under that Act. That application was refused and the judge's decision was upheld by the Court of Appeal – see [1982] 1 Lloyd's Reports 427.

At the time of the substantive appeal to the Court of Appeal, the affidavit of Subash Chandran which is attached to the affidavit of Sukhwant Singh filed in these proceedings had been sworn. Subash Chandran in his affidavit purported to give expert opinion on the Bretton Woods Agreement and the Malaysian Exchange Control Act 1953 and on how they affected persons resident in Malaysia. Mr. Selvadurai conceded before me that Patel and his legal advisers in London must have known of the existence of Subash Chandran's affidavit at that time. Yet no application was made to the Court of Appeal for leave to re-amend Patel's defence or to produce further and additional evidence on the Malaysian Exchange Control point. What is even more puzzling was that Subash Chandran's affidavit which was obviously meant for the substantive appeal proceedings was never filed.

Mr. Raj Singam, counsel for the Bank, referred me to *Ralli* v. *Angullia*[4] which reaffirmed the common law doctrines of estoppel and *res judicata*. In the *Ralli* case the plaintiff sued the defendant upon a contract in the High Court of Judicature at Fort William in Bengal. The defendant unsuccessfully defended the proceedings, entering an appearance and filing a defence. He afterwards appealed to the Indian appellate court and his appeal was dismissed. It was admitted that in the Indian proceedings he had not defended on the ground that the contract was by way of wager and therefore void under the Indian Contract Act. The plaintiff then commenced these proceedings in the Supreme Court of the Straits Settlements to recover the amount due under the Indian Judgment including taxed costs and interest. The defendant in his defence pleaded that the judgment sued upon was obtained upon contracts entered into by way of gaming or wagering and void under section 7 of the Civil Law Ordinance 1909. The plaintiff averred in his reply that the defendant's plea afforded no answer to his claim. It was held, on determination of the point of law so raised before the trial under the provisions of section 327 of the Civil Procedure Code, that the law of India, as regards wagering, being similar to the law of the Straits Settlements, the defendant's plea afforded no answer to the plaintiff's claim. Further, that as the defendant had raised no plea based on wagering in India, as he could have done, he was, owing to the doctrine of estoppel, or *res judicata*, precluded from raising a similar plea in the courts of the Straits Settlements. It was further held that a foreign judgment is conclusive as to any matter adjudicated upon and cannot be impeached for any error of fact or law in an action based on it, apart from special grounds.

Woodward J. in delivering his judgment in the Court of Appeal had this to say:

> "In the case before us, the law of India with regard to wagering contracts being substantially the same as the law here, the question at once arises, did the defendant raise the plea of wagering contract in India. If he did, we must take it that the Court decided against him: for the judgment is presumed to be correct in law and in fact, and it is not alleged that it was obtained by fraud. If he did not raise the plea in India, presumably he could have raised it, and therefore he cannot raise it here, whether it be owing to the doctrine of estoppel or *res judicata* or because this court will not sit as a Court of Appeal from the Indian Courts..."

However, since the *Ralli* case was decided the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) was enacted and I quote below its provisions which are relevant to the present case:

> "3.(1) Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on any such application the High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to the provisions of this section, order the judgment to be registered accordingly.
>
> (2) No judgment shall be ordered to be registered under this section if
>
> (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other reason could not have been entertained by the registering court.
>
> (4) The Judges of the Supreme Court or any three of them of whom the Chief Justice shall be one shall provide by rules –
>
> (b) for enabling the High Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit."

Order 67 rule 9 of the Rules of the Supreme Court 1970 which contains the rules made under section 3(4) of the Act reads as follows:—

"9.(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Ordinance is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 3(2) of that Ordinance or that it is not just or convenient that the judgment should be enforced in Singapore or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit."

Now, the court has been vested with a discretion to set aside the registration of any foreign judgment which is non-registrable under paragraphs (a) to (f) of section 3(2) of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) or if it is not just or convenient that the judgment should be enforced in Singapore or if there is some other sufficient reason for setting it aside.

In the case of *Lam Soon Cannery & Co.* v. *Hooper & Co.*,[5] which was an appeal against the decision of the High Court in Singapore dismissing an application by the appellants to set aside the registration of a judgment against the appellants received by the respondents in the High Court in England, the Federal Court of Malaysia held that in the circumstances of this case (where the appellants had been held to be in breach of contract in that they submitted false bills of lading indicating that goods had been shipped in May 1951 when in fact the goods were shipped in June, 1951) and in view of the fact that in arranging for the bills of lading in this case to be antedated the appellants had acted on the request of the respondents, the registration of the judgment should be set aside.

In the *Lam Soon case* it was clear from the undisputed facts before the court that the bills of lading had been illegally antedated by the appellants at the behest of the respondents. So, Ong Hock Thye F.J. in delivering his judgment in the Federal Court said:

"On this ground alone, for my own part, I would hold that the respondents do not deserve to be indemnified by the appellants for carrying out their instructions. It lies ill in the mouth of the respondents to take advantage of their own wrongdoing at the expense of the innocent party."

In the present case I have not been persuaded on a balance of probabilities that TCCM was a sham, cloak, device, stratagem, puppet, creature of Patel as alleged by Mr. Selvadurai, created by him to enable Patel to enter into forward foreign exchange contracts. There is very little evidence to support his allegation. If this allegation had any substance it would have been made at the hearing before Bingham J., or before the Court of Appeal in London. It is not as if Patel and his legal advisers were not aware of the provisions of the Bretton Woods Agreement and the Malaysian Exchange Control Act 1953 at the relevant times. The circumstances are fraught with suspicion; but, suspicious as they are they may, nevertheless, be susceptible of explanation, and if so, the opportunity for explanation and defence ought to have been given. I am therefore of the opinion that in the circumstances of this case I cannot give judgment upon the aforesaid contentious questions of fact which had not been raised in the courts in London.

In the case of *Connolly* v. *Consumers Cordage Co.*,[6] it was held that it is the right and duty of the court at any stage of a cause to consider, and, if it is sufficiently proved, to act upon an illegality which may be fatal to the claims of either of the parties to the litigation to take care that the process of the court should not be used for the purpose of establishing a claim that ought not to be permitted to be enforced in a court of justice. But in that case the Supreme Court of Canada after argument and before judgment, on its own motion questioned the legality of the contract upon which the action was brought though neither at the original trial nor at any subsequent period was any evidence offered on the question of illegality. The Judicial Committee of the Privy Council, though considering the circumstances very suspicious, declined to give judgment upon questions which had not been raised in the court below and sent the case back for a new trial.

In the present case it would be futile for me to order a new trial between the Bank and Patel or to order an issue to be tried because the Bank's original cause of action is now statute-barred. In any event, if Patel had in fact created TCCM for the purpose of circumventing the Bretton Woods Agreement and the Malaysia Exchange Control Act, as alleged by Mr. Selvadurai, he must not be allowed to profit from his own wrongdoing at the

expense of an innocent party.

I find that it is just and convenient that the judgment of the High Court of Judicature, Queen's Bench Division dated October 22, 1981 and the Order of the Court of Appeal dated May 24, 1983 should be enforced in Singapore. I am satisfied that it has not been sufficiently proved that the aforesaid judgment and Order were in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained in a Singapore court. I therefore dismiss with costs this application to set aside the registration of the aforesaid judgment and Order under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24).

Application dismissed.

Solicitors: *Drew & Napier*; *Selvadurai Pala Krishnan & Partners.*

SUN-LINE (MANAGEMENT) LTD. v. CANPOTEX SHIPPING SERVICES LTD.

[O.C.J. (Rajah J.) May 7, 1986]

[Singapore – Originating Summons No. 165 of 1986]

Reciprocal Enforcement of Judgments – Charterparty – Arbitration – Abandonment of arbitration – Default judgment – Registration of judgment in Singapore – Application to set aside registration of judgment – Whether judgment debtors have submitted to jurisdiction of English Courts – Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) s. 3(2) (b) – R.S.C. 1970, O. 67 r. 1.

Conflict of Laws – Charterparty – Agreement to arbitration in London and be subject to English Law – Whether submission to jurisdiction of English Courts.

Sun-Line (Management) Ltd. (judgment creditors) are a company incorporated in Hong Kong and Canpotex Shipping Services Ltd. (judgment debtors) are a company incorporated in Canada. The parties entered into in Hong Kong a Charterparty agreement, Clause 37 of which reads as follows:-

> "Any dispute of law or fact arising under this Charter Party shall be referred to arbitration. Such arbitration must commence within one (1) year of final discharge or from the date of cancellation if the voyage is not performed. Unless otherwise agreed, arbitration shall take place in London in the following manner and be subject to English law. One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men conversant with Shipping practice."

Disputes arose between the parties as to what monies were payable on freight and demurrage under the Charter party. The judgment creditors did not proceed to arbitration. Instead they proceeded to litigate and obtained a default judgment against the judgment debtors on March 20, 1985, in the High Court, England. On February 7, 1986, the judgment creditors obtained in Singapore an *ex parte* order that the default judgment be registered as a judgment of the Singapore High Court. The judgment debtors apply to set aside the registration of the default judgment.

Held, allowing the application: (1) the issue for decision is whether or not on the construction of the said Clause 37 the judgment debtors by agreeing to arbitration taking place in London according to English law, had agreed to submit themselves to the jurisdiction of the English courts;

(2) under the said Clause 37, both parties could at any time as between themselves have changed the venue of the arbitration and that the only agreement between the parties under the said clause was the submission by either party to arbitration in London according to English law and nothing more. It was no part of the agreement express or implied that legal proceedings could be commenced by either party in the English courts to enforce claims arising under the Charterparty;

(3) the judgment creditors abandoned their rights of arbitration under the said Clause 37. Once this happened the judgment creditors had no other rights accruing to them under the said Clause 37. In the result the judgment debtors had not under the said Clause 37 submitted themselves to the jurisdiction of the English courts, and so could only be sued either in Hong Kong, where the Charterparty was signed, or in Canada, where they are resident and carry on business.

Cases referred to:-

(1) *Dunbee Ltd.* v. *Gilman & Co. (Australia) Pty. Ltd.* [1968] 2 Lloyds Rep. 394.
(2) *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote* [1894] A.C. 670, 686.
(3) *Feyerich* v. *Hubbard* (1902) 71 L.J.K.B. 509; 86 L.T. 829.
(4) *Jeannot* v. *Fuerst* (1909) 100 L.T. 816.
(5) *International Alltex Corporation* v. *Lawler Creations Ltd.* [1965] Irish Reports 264.
(6) *Tracomin SA* v. *Sudan Oil Seeds (No. 2)* [1983] 3 All E.R. 140.
(7) *Pena Copper Mines Ltd.* v. *Rio Tinto Co. Ltd.* [1911-13] All E.R. Rep. 209.
(8) *Ellerman Lines Ltd.* v. *Read* [1928] All E.R. Rep. 415.
(9) *Royal Exchange Assurance Co. Ltd.* v. *Compania Naviera Santi SA, The Tropaioforos (No. 2)* [1962] 1 Lloyd's Rep. 410.